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Dated: February 13, 2004

Signature: Bryan J. Lempi
(Bryan J. Lempi)

Attorney Docket No.: 30051/32006
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Hans-Peter Wild

Application No.: 09/690,409

Group Art Unit: 3721

Filed: October 17, 2000

Examiner: Thanh K. Truong

For: Apparatus for Applying Drinking Straws

APPELLANTS' REPLY BRIEF

Mail Stop Appeal Brief Patents
Commissioner for Patents
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Dear Sir:

In response to the Examiner's Answer mailed December 30, 2003 in connection with the above-identified patent application, the appellants respectfully submit the instant Appellants' Reply Brief in accordance with 37 C.F.R. § 1.193.

This Appellants' Reply Brief is timely filed on this day February 13, 2004, which is within two months from the date of the Examiner's Answer. No extension of time fee is believed due to accompany this Appellants' Reply Brief. Thus, no fees accompany this submission.

This reply brief is transmitted in triplicate.

I. RELATED APPEALS AND INTERFERENCES

In Appellants' Appeal Brief, the appellants mistakenly omitted a statement related to the identification of any appeals and interferences. Therefore the appellants now affirmatively state that there are no related appeals or interferences.

II. REPLY ARGUMENT

Geyssel Does Not Anticipate Claims 1-4

Independent claim 1 recites that “the stand up bag lies on a side surface resting on the conveyor surface that is generally opposite said receiving surface.” The conveyor surface is that which moves the stand up bag through the apparatus. The receiving surface is that surface upon which the drinking straw is placed. The surface on which the bag lies is the surface *opposite* the straw receiving surface. Geyssel fails to disclose or suggest at least this limitation of independent claim 1.

Once again, the Examiner’s Answer points to Fig. 9 in Geyssel as allegedly disclosing that “the receiving surface of the stand up bag 12 is generally opposite the surface that is resting on the conveyor.” This contention directly contradicts the teachings of Geyssel.

Geyssel teaches only that the straw is to be applied to one side surface (60) of a package (12), the side surface (60) *being opposite another side surface* (66) of the package (12), *wherein the opposite side surface* (66) *rests upon a guide rail* (67), not the conveyor (13). This is clearly and explicitly set forth at col. 6, lines 1-6, and illustrated in Fig. 4. Geyssel discloses

...the applicator lever 41 move[s] forward against the drinking straw 11 that is opposite the package and thrusts this against the side 60 of the package 12 which is opposite the compartmentalized wheel 20; the package supported on its opposite side 66 by means of a guide rail 67 that is secured to the conveyor belt 13.

Geyssel, col. 6 ll. 1-6 (emphasis added).

The guide rail (67), as shown in FIG. 4, is stationary and thus is not a conveying surface. The side surface (66) and the bottom surface touching the conveyer are clearly and unequivocally two different surfaces. In fact, in the disclosed arrangement of Geyssel, the package requires the support of both the guide rail (67) against the opposite side surface (66) and the conveyor (13) against the package base. The structure of claim 1 eliminates the need for the guide rail in Geyssel. No matter how one might stretch the disclosure of Geyssel, Geyssel teaches no other structure or arrangement.

The Examiner's Answer states that the "abstract of Geyssel discloses that 'the drinking straws (11) can be secured in different directions and on variously inclined surfaces of the package (12)'." This passage fails to suggest how the relationship between the receiving surface, the opposite side surface, and the support surface as described in the specification and drawings of Geyssel can be modified. Despite the continued attempts to demonstrate otherwise, the straw receiving surface in Geyssel is never disclosed or suggested to be a surface opposite the surface which rests on the conveyor, but rather the receiving surface is always opposite the guide rail.

Therefore, for at least this reason, Geyssel simply does not disclose all of the limitations of claim 1. As a result, Geyssel does not anticipate claim 1 or corresponding dependent claims 2-4.

Geyssel Does Not Anticipate Claim 5

Claim 5 recites a stand up bag with a bottom surface, a top end, and a pair of side surfaces interconnecting the top end and bottom surface. Substantially similar to the claim 1 limitation discussed above, claim 5 also recites that "each of the stand up bags is conveyed having one of the opposite side surfaces resting on the conveyor surface, and wherein a drinking straw is applied to the other of the opposite side surfaces of each of the stand up bags." Again, for at least the same reasons put forth with respect to claim 1, Geyssel does not teach or suggest this limitation of claim 5.

Therefore, claim 5 is not anticipated by the Geyssel disclosure.

Geyssel Does Not Anticipate Claim 6

Claim 6 recites a stand up bag having a bottom surface, a top end, and a pair of opposed non-planar side surfaces. The side surfaces are curved or "cushion" shaped. Similar to claims 1 and 5 above, claim 6 also recites that "each of the stand up bags is conveyed having one of the opposite non-planar side surfaces resting on the conveyor surface, and wherein a drinking straw is applied to the other of the opposite non-planar side surfaces of each of the stand up bags." As with claims 1 and 5 above, Geyssel does not disclose applying a drinking straw to a receiving surface of an article that is opposite the surface lying on the conveyor.

Application No.: 09/690,409

Docket No.: 30051/32006

Claim 6 is not anticipated by the Geyssel disclosure.

In view of the foregoing arguments, claims 1-6 are in condition for allowance as presently written.

Dated: February 13, 2004

Respectfully submitted,

By


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